

UNITED STATES DISTRICT COURT

for the
Southern District of Ohio

FILED
RICHARD W. NAGEL
CLERK OF COURT

4/13/21

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WEST. DIV. DAYTON

In the Matter of the Use of
(Briefly describe the property to be searched
or identify the person by name and address)

THE CELLULAR TELEPHONE ASSIGNED CALL
NUMBER (937) 396-4935

Case No. 3:21MJ141

APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment A

located in the _____ District of _____, there is now concealed (identify the person or describe the property to be seized):

See Attachment B

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
- ☒ contraband, fruits of crime, or other items illegally possessed;
- ☒ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	Offense Description
21 USC s. 841(a)(1)	possession with intent to distribute/distribution of controlled substances
21 USC s. 843(b)	use of telephone communication facility
21 USC s. 846	conspiracy to possess with intent to distribute/distribute controlled substances

The application is based on these facts:

See Attached affidavit of Ryan Fergot

☒ Continued on the attached sheet.

☒ Delayed notice of 30 days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

*To ensure technical compliance with the Pen Register Statute, 18 U.S.C. §§ 3121-3127, this warrant also functions as a pen register order. Consistent with the requirement for an application for a pen register order, I, Brent Tabacchi, certify that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the DEA. See 18 U.S.C. §§ 3122(b), 3123(b).

Ryan Fergot
Applicant's signature

Ryan Fergot, SA of the DEA
Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by reliable electronic means
FaceTime

Date: 4/13/21

City and state: Dayton, Ohio

Sharon L. Digh



signature

US Magistrate Judge
name and title

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

IN THE MATTER OF THE SEARCH OF
THE CELLULAR TELEPHONE
ASSIGNED CALL NUMBER (937) 396-
4935

Case No. 3:21MJ141

Filed Under Seal

AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT

I, **Ryan Fergot**, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for a search warrant under Federal Rule of Criminal Procedure 41 and 18 U.S.C. §§ 2703(c)(1)(A) for information about the location of the cellular telephone assigned call number (937) 396-4935 (“**Target Telephone**”) registered to Jennifer M FERMAN, 15 York Avenue, Dayton, Ohio 45403, whose service provider is T-Mobile, a wireless telephone service provider headquartered at 4 Sylvan Way, Parisippany, New Jersey. The **Target Telephone** is described herein and in Attachment A, and the location information to be seized is described herein and in Attachment B.

2. Because this warrant seeks the prospective collection of information, including cell-site location information, that may fall within the statutory definitions of information collected by a “pen register” and/or “trap and trace device,” *see* 18 U.S.C. § 3127(3) & (4), the requested warrant is designed to also comply with the Pen Register Act. *See* 18 U.S.C. §§ 3121-3127. The requested warrant therefore includes all the information required to be included in an order pursuant to that statute. *See* 18 U.S.C. § 3123(b)(1).

3. I am a Special Agent with the United States Drug Enforcement Administration (DEA), that is, an officer of the United States who is empowered by law to conduct investigations of and to make arrests for offenses enumerated in Title 21, United States Code, Section 878. The

information contained in this Affidavit is either personally known by me or relayed to me by other law enforcement officers involved in this investigation. I have been employed as a Special Agent with the DEA since September 2018. In September 2018, I attended the DEA Academy which consisted of 17 weeks of training in conducting federal drug trafficking investigations; handling confidential sources; conducting undercover operations; conducting mobile, static, foot and electronic surveillance; conducting tactical entry and vehicle arrest operations; using defensive tactics and firearms; as well as additional aspects of conducting DEA lead investigations. I have been assigned to the DEA Dayton Resident Office since April 2019. Prior to employment with the DEA, I was a sworn Law Enforcement Officer of the State of Wisconsin who was charged with the duty to investigate criminal activity and enforce the criminal laws of the State of Wisconsin, and employed by the City of Appleton Police Department from August 2014 to September 2018. During my employment with the Appleton Police Department, I was assigned to the Department's patrol division. During my time as a patrol officer, I conducted retail level drug investigations and I assisted the Appleton Police Department's Community Resource Unit (CRU) which included Narcotics Investigations, Prostitution and Pimping, Human Trafficking, and Criminal Street Gangs.

4. Since the time of my assignment with the DEA, and during time spent as an Appleton Police Officer, I have been involved in narcotics-related arrests, executed search warrants that resulted in the seizure of narcotics, and participated in undercover narcotics purchases. Through training and experience, I am familiar with the manner in which persons involved in the illicit distribution of controlled substances often operate. These people usually attempt to conceal their identities, as well as the locations at which they reside, and where they store controlled substances and the illegal proceeds derived.

5. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

6. Based on the facts set forth in this affidavit, there is probable cause to believe that violations of 21 U.S.C. §§ 846 and 841 (possession with the intent to distribute and to distribute a controlled substance and conspiracy to commit the same); and 21 U.S.C. § 843(b) (use of a communications facility to commit a felony) have been committed, are being committed, and will be committed by the holder of **TARGET TELEPHONE**, Clemente Quezada, and other known and unknown persons. There is also probable cause to believe that the location information described in Attachment B will constitute evidence of these criminal violations, and will lead to the identification of individuals who are engaged in the commission of these offenses.

7. The court has jurisdiction to issue the proposed warrant because it is a “court of competent jurisdiction” as defined in 18 U.S.C. § 2711. Specifically, the Court is a district court of the United States that has jurisdiction over the offense being investigated, *see* 18 U.S.C. § 2711(3)(A)(i).

PROBABLE CAUSE

8. The DEA Dayton Resident Office (DRO) is currently investigating a Dayton, Ohio based fentanyl and methamphetamine drug trafficking organization (DTO). During this investigation, DEA has identified Clemente Quezada as a shipment coordinator and distributor of kilogram quantities of illegal drugs within the Dayton, Ohio region.

9. On or about March 26, 2021, DEA sought and received an order from the Honorable Thomas M. Rose, District Court Judge of the United States District Court for the Southern District of Ohio, authorizing interception of wire and electronic communications over telephone number **937-219-9324**, a cellular telephone used by Clemente Quezada. As detailed in the affidavit submitted in support of that interception, Quezada used this telephone number to arrange drug transactions with a confidential informant during in or around February 2021. On or about March 26, 2021, DEA executed the Court's order and began intercepting conversations between Quezada and other individuals concerning drug trafficking activity.

10. On or about April 9, 2021, at approximately 12:39 p.m., pursuant to the above-described court order, DEA intercepted a telephone conversation between Quezada at 937-219-9324 and the unknown user of the **Target Telephone**. DEA believes that, during this conversation, which is detailed below, Quezada and the unknown user of the **Target Telephone** (identified as "UM") used coded language to discuss a drug transaction:

QUEZADA: [Unintelligible]

UM: Yeah, you hear me?

QUEZADA: Yeah.

UM: Yeah, you said what's up?

QUEZADA: What time you get off work?

UM: Uh, probably like around three or four.

QUEZADA: Hey, hey, you have two onions in your house?

UM: Uh two onions? Uh, yeah.

QUEZADA: Okay, um . . . when he gonna come by here [Unintelligible] he wants that.

UM: Who?

QUEZADA: [Unintelligible]

UM: Yeah.

QUEZADA: Uh, uh,uh, also uh fuck it, um [Unintelligible] of vitamins.

UM: But I can't go the way over there, bro.

QUEZADA: No, he's comin' down here bro.

UM: Oh, okay, okay.

QUEZADA: Yeah, se he wants me to wait, I'll call you right on.

UM: Oh, alright.

QUEZADA: I was just lettin' you know.

UM: Okay, that's cool.

QUEZADA: Alright.

UM: Alright bro.

QUEZADA: Alright.

Based on my training and experience as well my familiarity with this investigation, I believe that, during this conversation, Quezada and the unknown user of the **Target Telephone** discussed a drug transaction in coded language. Specifically, I know that drug dealers often refer to an ounce of drugs as an "onion" and pills (whether fentanyl or oxycontin) as "vitamins." During this conversation, Quezada asked the unknown user of the **Target Telephone** if he had two ounces of some type of drug stored at his residence. When the unknown user of the **Target Telephone** indicated that he did, Quezada explained that someone would be coming to obtain these drugs.

11. Investigators obtained toll records for Quezada's number – namely, 937-219-9324. A review of these records revealed that Quezada's number and the **Target Telephone** are in frequent contact with one another. Coupling these tolls with the above-described intercepted conversations, the **Target Telephone** is being utilized for the transportation and distribution of illegal drugs to the Dayton, Ohio region. Additionally, I know that drug dealers frequently place their cellular telephones in under fictitious identities or in the name of nominee subscribers. Monitoring the location of the **Target Telephone** will assist investigators identify the holder of **Target Telephone**, locations where the user of the **Target Telephone** stores drugs, and other coconspirators with whom this unknown person meets. This information also will assist DEA identify patterns of travel and additional possible locations where **Target Telephone** may be delivering drugs.

12. In my training and experience, I have learned that T-Mobile is a company that provides cellular telephone access to the general public. I also know that providers of cellular telephone service have technical capabilities that allow them to collect and generate information about the locations of the cellular telephones to which they provide service, including E-911 Phase II data, also known as GPS data or latitude-longitude data and cell-site data, also known as "tower/face information" or cell tower/sector records. E-911 Phase II data provides relatively precise location information about the cellular telephone itself, either via GPS tracking technology built into the phone or by triangulating on the device's signal using data from several of the provider's cell towers. Cell-site data identifies the "cell towers" (i.e., antenna towers covering specific geographic areas) that received a radio signal from the cellular telephone and, in some cases, the "sector" (i.e., faces of the towers) to which the telephone connected. These towers are often a half-mile or more apart, even in urban areas, and can be 10

or more miles apart in rural areas. Furthermore, the tower closest to a wireless device does not necessarily serve every call made to or from that device. Accordingly, cell-site data is typically less precise than E-911 Phase II data.

13. Based on my training and experience, I know that T-Mobile can collect E-911 Phase II data about the location of the **Target Telephone**, including by initiating a signal to determine the location of the **Target Telephone** on Sprint network or with such other reference points as may be reasonably available.

14. Based on my training and experience, I know that T-Mobile can collect cell-site data about the **Target Telephone**. Based on my training and experience, I know that for each communication a cellular device makes, its wireless service provider can typically determine: (1) the date and time of the communication; (2) the telephone numbers involved, if any; (3) the cell tower to which the customer connected at the beginning of the communication; (4) the cell tower to which the customer connected at the end of the communication; and (5) the duration of the communication. I also know that wireless providers such as T-Mobile typically collect and retain cell-site data pertaining to cellular devices to which they provide service in their normal course of business in order to use this information for various business-related purposes.

AUTHORIZATION REQUEST

15. Based on the foregoing, I request that the Court issue the proposed search warrant, pursuant to Federal Rule of Criminal Procedure 41 and 18 U.S.C. § 2703(c).

16. I further request, pursuant to 18 U.S.C. § 3103a(b) and Federal Rule of Criminal Procedure 41(f)(3), that the Court authorize the officer executing the warrant to delay notice until 30 days after the collection authorized by the warrant has been completed. There is reasonable cause to believe that providing immediate notification of the warrant may have an

adverse result, as defined in 18 U.S.C. § 2705. Providing immediate notice to the subscriber or user of the **Target Telephone** would seriously jeopardize the ongoing investigation, as such a disclosure would give that person an opportunity to destroy evidence, change patterns of behavior, notify confederates, and flee from prosecution. *See* 18 U.S.C. § 3103a(b)(1). As further specified in Attachment B, which is incorporated into the warrant, the proposed search warrant does not authorize the seizure of any tangible property. *See* 18 U.S.C. § 3103a(b)(2). Moreover, to the extent that the warrant authorizes the seizure of any wire or electronic communication (as defined in 18 U.S.C. § 2510) or any stored wire or electronic information, there is reasonable necessity for the seizure for the reasons set forth above. *See* 18 U.S.C. § 3103a(b)(2).

17. I further request that the Court direct T-Mobile to disclose to the government any information described in Attachment B that is within the possession, custody, or control of T-Mobile. I also request that the Court direct Sprint to furnish the government all information, facilities, and technical assistance necessary to accomplish the collection of the information described in Attachment B unobtrusively and with a minimum of interference with T-Mobile's services, including by initiating a signal to determine the location of the **Target Telephone** on Sprint's network or with such other reference points as may be reasonably available, and at such intervals and times directed by the government. The government shall reasonably compensate T-Mobile for reasonable expenses incurred in furnishing such facilities or assistance.

18. I further request that the Court authorize execution of the warrant at any time of day or night, owing to the potential need to locate the **Target Telephone** outside of daytime hours.

Respectfully submitted,

Ryan Fergot

Ryan M. Fergot
Special Agent
Drug Enforcement Administration

Sworn to and affirmed before me on April 13, 2021

Sharon L. Ovington

Sharon L. Ovington
United States Magistrate Judge

The seal of the United States District Court for the Southern District of Ohio is visible in the background. It features an eagle with spread wings, perched on a shield with vertical stripes. The text "UNITED STATES DISTRICT COURT" is arched above the eagle, and "SOUTHERN DISTRICT OF OHIO" is arched below it.

ATTACHMENT A

Property to Be Searched

1. The cellular telephone assigned call number **(937) 396-4935**, subscribed to in the name of Jennifer M. FERMAN, at 15 York Avenue, Dayton, OH, 45403, (the “**Target Telephone**”), whose wireless service provider is T-Mobile, a company headquartered 4 Sylvan Way, Parisippany, New Jersey
2. Records and information associated with the **Target Telephone** that is within the possession, custody, or control of T-Mobile including information about the location of the cellular telephone if it is subsequently assigned a different call number.

ATTACHMENT B

Particular Things to be Seized

I. Information to be Disclosed by the Provider

All information about the location of the **Target Telephone** described in Attachment A for a period of thirty days, during all times of day and night. “Information about the location of the Target Telephone” includes all available E-911 Phase II data, GPS data, latitude-longitude data, and other precise location information, as well as all data about which “cell towers” (i.e., antenna towers covering specific geographic areas) and “sectors” (i.e., faces of the towers) received a radio signal from the cellular telephone described in Attachment A.

To the extent that the information described in the previous paragraph (hereinafter, “Location Information”) is within the possession, custody, or control of Sprint, Sprint is required to disclose the Location Information to the government. In addition, Sprint must furnish the government all information, facilities, and technical assistance necessary to accomplish the collection of the Location Information unobtrusively and with a minimum of interference with Sprint’s services, including by initiating a signal to determine the location of the **Target Telephone** on Sprint’s network or with such other reference points as may be reasonably available, and at such intervals and times directed by the government. The government shall compensate Sprint for reasonable expenses incurred in furnishing such facilities or assistance.

This warrant does not authorize the seizure of any tangible property. In approving this warrant, the Court finds reasonable necessity for the seizure of the Location Information. *See* 18 U.S.C. § 3103a(b)(2).

II. Information to Be Seized by the Government

All information described above in Section I that constitutes evidence of violations of 21 U.S.C. §§ 846 and 841 (possession with the intent to distribute and to distribute a controlled substance and conspiracy to commit the same); and 21 U.S.C. § 843(b) (use of a communications facility to commit a felony) involving Juana Elvira Arrechea-Gilbert, and others known and unknown to the government.

Law enforcement personnel (who may include, in addition to law enforcement officers and agents, attorneys for the government, attorney support staff, agency personnel assisting the government in this investigation, and outside technical experts under government control) are authorized to review the records produced by the Provider in order to locate the things particularly described in this Warrant.